

**IN THE SUPERIOR COURT OF THE STATE OF DELAWARE  
IN AND FOR NEW CASTLE COUNTY**

TIMOTHY J. MEADES, SR.,	)	
	)	
Plaintiff,	)	
	)	
v.	)	C.A. No. 03C-05-013 WCC
	)	
WILMINGTON HOUSING	)	
AUTHORITY, and FRED PURNELL,	)	
	)	
Defendants.	)	

Submitted: January 4, 2006

Decided: April 28, 2006

**MEMORANDUM OPINION**

**Upon Defendants' Motion for Summary Judgment. GRANTED.**

Timothy J. Meades; 615 W. 8<sup>th</sup> St.; Wilmington, Delaware. *Pro se* Plaintiff.

Barry M. Willoughby; Young Conaway Stargatt & Taylor, LLP; 1000 West St.,  
17<sup>th</sup> Floor; Wilmington, Delaware. Attorney for Defendants.

**CARPENTER, J.**

After consideration of the record and the parties' submissions, the Court hereby grants Defendants Wilmington Housing Authority (WHA) and Fred Pumell's Motion for Summary Judgment for the reasons set forth below.

### **Facts**<sup>1</sup>

On April 27, 2001, Fred Pumell, Executive Director for WHA, observed non-WHA employees, including John Triplett, removing windows, doors and frames from units within the Hope VI Development Project (the "Hope Project"). Mr. Triplett advised Mr. Pumell that Plaintiff Timothy J. Meades, Sr. had given him permission to remove materials from the site. Upon investigation it was concluded by WHA that, for two days, Mr. Meades had allowed two unsupervised individuals onto the project site, resulting in a financial loss to WHA and causing potential environmental damages to the project site. To determine exactly what occurred, Mr. Pumell instructed Frederick Tate, Public Safety Officer for WHA, to contact the Wilmington Police Department (WPD) to assist in an investigation.

As a result, on May 3, 2001, Mr. Meades was terminated from his employment as district superintendent with WHA. Pursuant to Mr. Meades's belief of wrongful termination, an arbitration hearing was held, and it was determined that WHA

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<sup>1</sup>For a complete recitation of the facts, see this Court's previous opinion. *Meades v. Wilmington Housing Auth.*, 2004 WL 1732283 (Del. Super. Ct.).

justifiably terminated Mr. Meades.<sup>2</sup> This decision was upheld by the Court of Chancery of the State of Delaware.<sup>3</sup> Subsequently, a complaint was filed by Mr. Meades in Superior Court. In light of the Chancery Court decision, this Court barred all of the original claims pursuant to the doctrine of *res judicata*. The Court allowed Mr. Meades to file an amended complaint, which included claims against the Defendants for defamation of character, emotional distress and punitive damages. Specifically, Mr. Meades alleges he was falsely accused of mishandling WHA funds and misappropriating WHA property, and that these accusations were made known to the Wilmington Police Department (WPD), Federal Bureau of Investigation (FBI) and staff of WHA.

The Defendants filed a motion to dismiss the amended complaint, and upon oral argument and review of the pleadings submitted by all parties, this Court determined the amended complaint failed to state a claim upon which relief could be granted, and dismissed the complaint. In so doing, this Court determined the Defendants were protected by a conditional privilege, which had not been waived or forfeited, and thus the Defendant did not have a valid defamation claim against the Defendants. Upon appeal of that decision by Mr. Meades, the Supreme Court of

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<sup>2</sup>*AFSCME Local Union 563 v. Wilmington Housing Auth.*, Am. Arbitration Ass'n, No. 143900083601 (June 6, 2002)(Turner, Arb.).

<sup>3</sup>*Meades v. Wilmington Housing Auth.*, 2003 WL 939863 (Del. Ch.).

Delaware determined that the affirmative defense of conditional privilege to the charge of defamation could not be appropriately decided through a motion to dismiss. As such, the Supreme Court remanded the case to this Court for further proceedings.<sup>4</sup>

Upon remand, discovery was conducted by both parties, and this motion for summary judgment was filed by the Defendants. The question currently before this Court is whether there remains a material question of fact regarding whether WHA violated its conditional privilege by either initiating criminal investigations against Mr. Meades without any evidence or by overly publishing its grounds for termination. Upon review of the record and pleadings submitted by the parties, the Court hereby grants the motion for the reasons set forth below.

### **Standard of Review**

Summary judgment is appropriate when the moving party has shown there are no genuine issues of material fact, and as a result, it is entitled to judgment as a matter of law.<sup>5</sup> In considering such a motion, the court must evaluate the facts in the light most favorable to the nonmoving party.<sup>6</sup> Summary judgment will not be granted when the record reasonably indicates that a material fact is in dispute or if

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<sup>4</sup>*Meades v. Wilmington Housing Auth.*, 875 A.2d 632 (Del. 2005).

<sup>5</sup>*Moore v. Sizemore*, 405 A.2d 679, 680 (Del. 1979); *Schueler v. Martin*, 674 A.2d 882, 885 (Del. Super. Ct. 1996).

<sup>6</sup>*Pierce v. Int'l. Ins. Co. of Ill.*, 671 A.2d 1361, 1363 (Del. 1996).

it seems desirable to inquire more thoroughly into the facts in order to clarify the application of law to the circumstances.<sup>7</sup> A summary judgment motion is a tool used to remove any factually unsupported claims, and is appropriate when “the nonmoving party bears the ultimate burden of proof and the moving party can illustrate a complete failure of proof regarding an essential element of the nonmovant’s case.”<sup>8</sup> Thus, when the complaint asserts a claim for defamation, and the facts show a conditional privilege is present, summary judgment is appropriate if actual malice is not shown.<sup>9</sup>

## **Discussion**

### **I. Defamation**

A defamatory statement is one that “harm[s] the reputation of another as to lower [him] in the estimation of the community or to deter third persons from associating or dealing with [him].”<sup>10</sup> Mr. Meades argues he was defamed by the pre-termination letter drafted by Karen Spellman<sup>11</sup> on May 3, 2001 and by statements

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<sup>7</sup>*Ebersole v. Lowengrub*, 180 A.2d 467, 468-469 (Del. 1962).

<sup>8</sup>*Durig v. Woodbridge Board of Education*, 1992 WL 301983 (Del. Super. Ct.), at \*7. (citations omitted).

<sup>9</sup>*Id.* (citing *Battista v. Chrysler Corp.*, 454 A.2d 286, 291 (Del. Super. Ct. 1982)).

<sup>10</sup>*Schuster v. DeRocili*, 2000 WL 1211504 (Del. Super. Ct.), at \*4, *rev’d on other grounds*. (citing Restatement of Torts § 559).

<sup>11</sup>Ms. Spellman is the Director of Housing Operations for WHA.

made by the WHA to the WPD and FBI.<sup>12</sup> To prove defamation, he must show the letter or surrounding statements were harmful to his reputation and that they were published. It appears that the Defendants do not dispute that there was publication to necessary individuals nor that, if the allegations made in the letter were determined to be false, they would have been harmful to the Plaintiff's reputation. Further, Mr. Meades is not required to establish special damages, as he has asserted a claim for libel per se, which includes statements that negatively affect one's business or profession or statements which impute a crime.<sup>13</sup> Both are arguably applicable to the case at hand. Accordingly, Mr. Meades has met his initial burden with respect to defamation.

## **II. Conditional Privilege**

However, if a defamatory statement is made in the course of the defamed party's employment and on behalf of the employer, it is a privileged statement and the

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<sup>12</sup>The Court has not found evidence within the record that the FBI was involved, but because this fact is not relevant to this decision, the Court will assume the FBI was involved without making a ruling on the matter.

<sup>13</sup>*Schuster*, 2000 WL 1211504, at \*4. (citing *Spence v. Funk*, 396 A.2d 967, 968 (Del. Super. Ct. 1978)). (Slander per se is one form of spoken defamation, and includes four categories: "(1) malign one in a trade, business or profession, (2) impute a crime, (3) imply that one has a loathsome disease, or (4) impute unchastity to a woman." Unlike slander or libel, if one of these four statements is made, the plaintiff is not required to prove special damages.).

defendant is presumed not liable.<sup>14</sup> Thus, a conditional privilege exists which protects WHA if the statements were made in the context of Mr. Meades's ability to perform his job.<sup>15</sup> The letter itself outlines what WHA believes occurred on April 27, 2001 at the Hope Project site, Mr. Meades's alleged role in his capacity as district superintendent, and the reason for his termination. It is communication between an employee and employer, thus a conditional privilege does exist. In addition, the statements made to the authorities stem from the facts within the pre-termination letter, and were made in connection with the investigation of criminal activity. Communication of a suspected crime to the proper authority is also protected by the privilege.<sup>16</sup>

Once this conditional privilege is present, the burden then shifts back to the plaintiff. The plaintiff must demonstrate the conditional privilege was waived by showing it was "abused 1) by excessive or improper publication, 2) by the use of the occasion for a purpose not embraced within the privilege, or 3) by making a statement

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<sup>14</sup>*Battista v. Chrysler Corp.*, 454 A.2d 286, 291 (Del. Super. Ct. 1982) ("This qualified privilege is particularly germane to the employer-employee relationship and has been recognized as such by the Delaware Supreme Court.") (citations omitted); see also *Schuster*, 2000 WL 1211504, at \*4.

<sup>15</sup>*Battista*, 454 A.2d at 291.

<sup>16</sup>*Shaffer v. Davis*, 1990 WL 81892 (Del. Super. Ct.).

which the speaker knows is false.”<sup>17</sup> In the alternative, the plaintiff must prove the statement was not made in good faith, or was made with actual malice or intent to harm the plaintiff.<sup>18</sup> In spite of being given the opportunity to conduct discovery, none of these theories can be supported by the evidence submitted to the Court.

#### ***A. Knowingly False Statements***

First, Mr. Meades cannot establish that WHA, Ms. Spellman, Mr. Tate or Mr. Purnell made either the statements to the police or drafted the pre-termination letter with knowledge the facts included were false. In an attempt to show the information within the pre-termination letter was knowingly false, Mr. Meades continuously insists “misappropriation of property” indicates he personally stole money and property from WHA, and that this phrase was included in the letter knowing it was false. But this assumption is not supported by the facts before this Court. The letter states Mr. Meades was responsible for the Hope Project site, that he left the site, leaving the gate open and allowing unsupervised individuals to remain on the site in his absence, which led to 35 units stripped of doors and windows, costing WHA money and causing a possible environmental hazard. And, in fact, Mr. Meades

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<sup>17</sup>*Schuster*, 2000 WL 1211504, at \*4.

<sup>18</sup>*Burr v. Atlantic Aviation Corp.*, 348 A.2d 179, 181 (Del. 1975), *rev’d on other grounds*; *Heller v. Dover Warehouse Market, Inc.*, 1988 WL 97858 (Del. Super. Ct.), at \*3. (Delaware law is well settled that a conditional privilege must be exercised in good faith, and determining whether this privilege was abused can be decided as a matter of law.).



admits he did leave two individuals at the site alone with the gate unlocked, thus those facts cannot now be declared by Mr. Meades as false even if he has an explanation for his actions or disputes the results of his actions.<sup>19</sup> The letter then applies the personnel policy sections deemed appropriate to those facts, and specifically indicates Mr. Meades was terminated from WHA for violating those sections.<sup>20</sup>

Further, Ms. Spellman stated in her deposition that “misappropriation of property,” which was included within one of the appropriate sections cited by WHA, did not mean that Mr. Meades personally stole property:

What misappropriating of property means is that you [Mr. Meades] put WHA in a position to suffer a loss based on your negligence to protect your assigned area.<sup>21</sup>

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<sup>19</sup>Def. Mot. Summ. J. Appendix, Meades Dep. 17.

<sup>20</sup>In relevant part, the pre-termination letter stated:

Your actions are in violation of three WHA policy regulations. You violated Section X of the Personnel Policy, Paragraph L, Personal Conduct “Negligent or fraudulent handling of Authority funds, neglect of duties, gross incompetency or insubordination, discourteous treatment of the public or any other personal conduct which adversely affects the best interest of the Authority are considered grounds for dismissal of an employee.” You also violated work rule #3, “...misappropriating property belonging to the Authority, co-employees, residents or others doing business with the Authority”, and work rule #13, “Carelessness and/or poor job performance.”

Pl. Resp. Appendix.

<sup>21</sup>Pl. Resp. Appendix, Spellman Dep. 18.

I never said Mr. Meades removed property. You asked me did this particular section, the misappropriating of property, did that apply in this case, what evidence did I have. You [Mr. Meades] told me that you opened the gate and you left the gate open and you left the scene. You told me that, so, therefore, the authority that you had or the responsibility that you had to protect WHA's property, you, I think that is what made this applicable in my mind to this situation because you told me that you left the gate open.<sup>22</sup>

The Court finds that the inclusion of this section is not unreasonable or unsupported by the facts of this case. Depending upon Mr. Meades's knowledge of the intended action by the Triplett crew, his conduct could be considered aiding and assisting another individual in committing a theft, undermining his concern over the "misappropriation" language. While perhaps not the most precise or clear description of conduct leading to Mr. Meades's termination, it certainly is a reasonable allegation of the policy violation committed by Mr. Meades. Therefore, Mr. Meades cannot show the Defendants knowingly placed false information in the letter, or that the information within the letter is in fact false.

### ***B. Excessive Publication***

Secondly, Mr. Meades may prove the conditional privilege was abused by the Defendants if the defamatory statements were published in excess. Ms. Spellman

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<sup>22</sup>*Id.* at 16.

states the termination letter went into Mr. Meades's personnel file, to the AFSCME Local Union 563,<sup>23</sup> to Mr. Meades, and to the parties involved in the termination hearing process.<sup>24</sup> Plaintiff fails to put forth any evidence of additional parties within WHA that the letter, or information therein, was provided to. The parties involved in the termination process and AFSCME are interested parties to Mr. Meades's termination, and therefore publication was clearly not excessive. And, as indicated in this Court's earlier opinion, this does not conclusively mean additional parties were not privy to the normal rumor information that would naturally flow from a supervisor's termination, but Mr. Meades still offers no evidence of unnecessary parties receiving the letter. Accordingly, excessive publication within WHA is not evident.

Additionally, Mr. Meades attempts to show the defamation was published in excess because the statements were shared with the FBI and WPD to initiate an investigation. WHA believed Mr. Meades either inappropriately allowed persons to take property from the Hope Project site or others had taken advantage of the situation and committed additional theft of WHA property, and it would have been a dereliction of its responsibility not to contact the police. The conditional privilege

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<sup>23</sup>American Federation of State County and Municipal Employees Union.

<sup>24</sup>Pl. Resp. Appendix, Spellman Dep. 35.

extends to all parties with corresponding interests, and with the facts at hand, the WPD and FBI are included since there is a shared public interest to thwart crime.<sup>25</sup> Since providing authorities with information to initiate a criminal investigation is protected by an absolute privilege, Mr. Meades fails to show excessive publication by disclosing it to the WPD or FBI.

### ***C. Actual Malice***

Lastly, Mr. Meades may show the privilege is forfeited if Defendants acted with actual malice in making the defamatory statements to WHA employees or the authorities, but the record before the Court lacks any indication of actual malice. For actual malice to be present, the defendant must have known the statements made were false, and made them nevertheless.<sup>26</sup> As previously stated, Mr. Meades fails to show the Defendants knowingly made false statements. Mr. Meades admits to leaving the site unattended, and allowing others to take WHA property. His only dispute appears to be with the characterization of his conduct within the pre-termination letter. It also cannot be disputed that Mr. Meades's alleged conduct would be included within the sections cited. Thus, Mr. Meades fails to show knowingly false statements were included in the letter, and therefore he fails to show actual malice.

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<sup>25</sup>*Shaffer*, 1990 WL 81892, at \*3. (“[t]o the extent the statements were made to the police to investigate criminal complaints, they are absolutely privileged.”) (citations omitted).

<sup>26</sup>*Heller*, 1988 WL 97858, at \*2.

Further, Mr. Meades argues WHA harbored malicious intent when it involved the authorities, though again, the record does not reflect the same. Mr. Purnell and Mr. Tate submitted affidavits to this Court, both of which are uncontroverted and supported by the documents attached thereto.<sup>27</sup> Mr. Purnell indicates he contacted Mr. Tate, a Public Safety Officer for WHA, to investigate and to involve the WPD,<sup>28</sup> which Mr. Tate did.<sup>29</sup> The two parties appear to be the sole link between the WHA and the WPD, therefore they appear to be the only two individuals who could have actual malice regarding the police contact. However, neither has been deposed, and neither affidavit alludes to any actual malice.<sup>30</sup> Typically malice is a question of fact for the jury, but when no evidence is before the Court which reflects the malicious intent by a privileged party, this Court may grant summary judgment.<sup>31</sup> Here, the record is simply devoid of any evidence WHA, Mr. Purnell or Mr. Tate acted with

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<sup>27</sup>*Battista*, 454 A.2d at 290. (Uncontroverted evidence provided to the Court in support of a motion for summary judgment will be accepted as true); *Moore*, 405 A.2d at 680, 681. (In reviewing a summary judgment motion, once the moving party demonstrates no genuine issue of material fact exists, it is then the burden of the nonmoving party to show the court that it does in fact exist.); *Plant v. Catalytic*, 287 A.2d 682, 684 (Del. Super. Ct. 1972). (The Court will consider affidavits submitted by the parties in determining if a genuine issue of material fact does exist, and if uncontroverted statements are in the affidavit, the Court must accept them as true.).

<sup>28</sup>Pl. Resp. Appendix, Purnell Affidavit.

<sup>29</sup>*Id.*, Tate Affidavit.

<sup>30</sup>Def. Mot. Summ. J. Appendix, Purnell Aff., Tate Aff.

<sup>31</sup>*Schuster*, 2000 WL 1211504, at \*5.

actual malice in an attempt to cause harm to Mr. Meades. Mr. Meades has been given a fair opportunity to establish this claim in discovery and has simply failed to do so.

**Conclusion**

As such, the facts before the Court allow for only one reasonable conclusion to be drawn, and for the foregoing reasons, the Defendants' Motion for Summary Judgment is hereby GRANTED.

IT IS SO ORDERED.

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Judge William C. Carpenter, Jr.